

## **Assembly Bill No. 1805**

### **CHAPTER 744**

An act to amend Sections 300 and 321 of, to amend the heading of Chapter 2 (commencing with Section 3100) of Division 3 of, to add Sections 3114, 3116, 3117, 3118, 3119, 3120, 3121, 3122, and 3123 to, to repeal Section 3104 of, to repeal Chapter 4 (commencing with Section 3300) of Division 3 of, to amend and renumber Sections 3100, 3102, 3103, 3103.5, 3106, 3107, 3108, 3109, 3110, 3111, and 3112 of, and to amend, renumber, and add Section 3101 of, the Elections Code, relating to military or overseas voters.

[Approved by Governor September 29, 2012. Filed with  
Secretary of State September 29, 2012.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 1805, Huffman. Military or overseas voters.**

Existing law regulates the voting procedures for special absentee voters, defined as members of the Armed Forces, citizens of the United States temporarily living outside of the territorial limits of the United States or District of Columbia, persons serving on a merchant vessel, and a spouse or dependent of a member of the Armed Forces. Existing law also regulates the voting procedures in federal elections with respect to a citizen of the United States residing outside of the territorial limits of the United States who was domiciled in California immediately prior to leaving the territorial limits of the United States.

This bill would revise and recast those provisions, replacing the term "special absentee voter" with the term "military or overseas voter." Under the bill, the term "military or overseas voter" would apply to electors absent from the county in which he or she is otherwise eligible to vote. The term would include a citizen of the United States living outside of the territorial limits of the United States, whether temporarily or permanently, if the citizen was a resident of this state when he or she was last living within the territorial limits of the United States. The bill would also specify that a citizen of the United States born outside of the territorial limits of the United States whose parent or legal guardian was a resident of California when last living within the territorial limits of the United States, provided that the voter has never been registered to vote in another state, is an elector and therefore a resident for purposes of the constitution and other provisions of the Elections Code. This bill would apply the voting procedures for citizens of the United States living outside of the territorial limits of the United States in federal elections to military or overseas voters in all elections, including state and local elections. This bill would also state that it is the intent of the Legislature in enacting this bill to implement the policies of the Uniform Military and

Overseas Voters Act, as adopted by the National Conference of Commissioners on Uniform State Laws.

This bill would provide new procedures for military or overseas voters to register to vote, to apply for voting ballots, and to vote. Specifically, this bill would, among other things, require unvoted voting materials to be electronically transmitted to a military or overseas voter, and would expand the use of the federal post card application and federal write-in absentee ballot in the state.

Because this bill would impose additional duties on local elections officials, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 300 of the Elections Code is amended to read:

300. (a) "Vote by mail voter" means any voter casting a ballot in any way other than at the polling place.

(b) "Military or overseas voter" means an elector absent from the county in which he or she is otherwise eligible to vote who is any of the following:

(1) A member of the active or reserve components of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; a Merchant Marine; a member of the United States Public Health Service Commissioned Corps; a member of the National Oceanic and Atmospheric Administration Commissioned Corps of the United States; or a member on activated status of the National Guard or state militia.

(2) A citizen of the United States living outside of the territorial limits of the United States or the District of Columbia.

(3) A spouse or dependent of a person described in paragraph (1).

SEC. 2. Section 321 of the Elections Code is amended to read:

321. (a) "Elector" means any person who is a United States citizen 18 years of age or older and, except as specified in subdivision (b), is a resident of an election precinct at least 15 days prior to an election.

(b) "Elector" also means any person described in paragraph (2) of subdivision (b) of Section 300, who, except for the residence requirement specified in subdivision (a), is eligible to vote in this state and meets any of the following conditions:

(1) He or she was a resident of this state when he or she was last living within the territorial limits of the United States or the District of Columbia.

(2) He or she was born outside of the United States or the District of Columbia, his or her parent or legal guardian was a resident of this state when the parent or legal guardian was last living within the territorial limits

of the United States or the District of Columbia, and he or she has not previously registered to vote in any other state.

(c) Each person qualifying as an elector under subdivision (b) shall be deemed to be a resident of this state for purposes of this code and Section 2 of Article II of the California Constitution.

SEC. 3. The heading of Chapter 2 (commencing with Section 3100) of Division 3 of the Elections Code is amended to read:

CHAPTER 2. MILITARY AND OVERSEAS VOTERS APPLICATION AND VOTING PROCEDURES

SEC. 4. Section 3100 of the Elections Code is amended and renumbered to read:

3102. (a) Any voter who qualifies as a military or overseas voter pursuant to subdivision (b) of Section 300 shall have the right to register for, and to vote by a vote by mail ballot in, any election within the state, including any general, special, or primary election for any federal or statewide office or state ballot measure that is voted on statewide. Any voter who qualifies as a military or overseas voter pursuant to subdivision (b) of Section 300 shall also have the right to register for, and to vote by a vote by mail ballot in, any other election for any office or ballot measure held in the precinct in which he or she was a resident when he or she was last living within the territorial limits of the United States or the District of Columbia, or, for a military or overseas voter qualified pursuant to paragraph (2) of subdivision (b) of Section 321, in any precinct of the state in which his or her parent or legal guardian resided when the parent or legal guardian last lived within the territorial limits of the United States or the District of Columbia.

(b) When a military or overseas voter applies for a vote by mail ballot, the application shall be deemed to be an affidavit of registration and an application for permanent vote by mail status, pursuant to Chapter 3 (commencing with Section 3200). The application shall be completed by the voter and shall contain the voter's name; the voter's date of birth; the address of the voter's residence in the state when the voter was last living within the territorial limits of the United States or the District of Columbia or, if qualified as a military or overseas voter pursuant to paragraph (2) of subdivision (b) of Section 321, the address of the voter's parent or legal guardian when the parent or legal guardian was last living within the territorial limits of the United States or the District of Columbia; the address to which the ballot is to be sent; the voter's political party preference or a statement that the voter declines to disclose a political party preference; and the voter's signature.

(c) If an elections official receives a completed federal postcard application from a person qualified as a military or overseas voter, the application shall be deemed to be an affidavit of registration, an application

for a vote by mail ballot, and an application for permanent vote by mail status, pursuant to Chapter 3 (commencing with Section 3200).

(d) If the applicant is not a resident of the county to which he or she has applied, the elections official receiving an application from a military or overseas voter shall forward it immediately to the county in which the applicant resided when he or she was last living within the territorial limits of the United States or the District of Columbia or, for a military or overseas voter qualified pursuant to paragraph (2) of subdivision (b) of Section 321, to the county in which his or her parent or legal guardian resided when the parent or legal guardian last lived within the territorial limits of the United States or the District of Columbia.

(e) An application made pursuant to this section shall be received by the elections official having jurisdiction over the election no later than seven days prior to the date of the election if the application is made solely as an application for a vote by mail ballot. An application made pursuant to this section and deemed to be an affidavit of registration shall be effective only if it is postmarked on or before the 15th day prior to the election.

SEC. 5. Section 3101 of the Elections Code is amended and renumbered to read:

3103. Upon timely receipt of an application received pursuant to Section 3102, the elections official shall examine the application to ascertain that it is properly executed in accordance with this code. If the elections official is satisfied of this fact, the applicant shall be deemed a duly registered voter as of the date appearing on the application to the same extent and with the same effect as though he or she had registered in proper time prior to the election.

SEC. 6. Section 3101 is added to the Elections Code, to read:

3101. (a) The Secretary of State shall see that this chapter is enforced pursuant to Section 12172.5 of the Government Code.

(b) The Secretary of State shall make available to any person who qualifies as a military or overseas voter information regarding voter registration procedures for military or overseas voters and procedures for casting ballots by military or overseas voters.

(c) The elections official for each district shall ensure that his or her jurisdiction has available a system that would allow a military or overseas voter to electronically request and receive a vote by mail application, an unvoted ballot, and other information pursuant to this chapter.

(d) The Secretary of State shall develop standardized military or overseas voter voting materials as required by this chapter.

(e) The Secretary of State shall prescribe the form and content of a declaration for use by a military or overseas voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, and status as a military or overseas voter, and shall further prescribe requirements for the timely and proper completion of a military or overseas voter's ballot. The declaration shall be based on the declaration prescribed to accompany a federal write-in absentee ballot, as modified to be consistent with this chapter. The elections official for each jurisdiction shall ensure that a form

for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required.

SEC. 7. Section 3102 of the Elections Code is amended and renumbered to read:

3104. Applications for the ballots of military or overseas voters shall be received and, except as provided in Section 3106, the ballots shall be received and canvassed, at the same time and under the same procedure as vote by mail ballots, insofar as that procedure is not inconsistent with this chapter.

SEC. 8. Section 3103 of the Elections Code is amended and renumbered to read:

3105. (a) Any application made pursuant to this chapter that is received by the elections official prior to the 60th day before the election shall be kept and processed on or after the 60th day before the election.

(b) (1) The elections official shall send the ballot not earlier than 60 days but not later than 45 days before the election and shall include with the ballot a list of all candidates who have qualified for the ballot and a list of all measures that are to be submitted to the voters and on which the voter is qualified to vote. The voter shall be entitled to write in the name of any specific candidate seeking nomination or election to any office listed on the ballot.

(2) The military or overseas voter may, in the alternative to the ballot provided pursuant to paragraph (1), use a federal write-in absentee ballot to vote in any election in which the military or overseas voter is qualified to vote.

(c) Notwithstanding Section 15341 or any other provision of law, any name written upon a ballot for a particular office pursuant to subdivision (b) shall be counted for the office or nomination, providing the candidate whose name has been written on the ballot has, as of the date of the election, qualified to have his or her name placed on the ballot for the office, or has qualified as a write-in candidate for the office.

(d) Except as provided in Section 3106, the elections official shall receive and canvass military or overseas voter ballots described in this section under the same procedure as vote by mail ballots, insofar as that procedure is not inconsistent with this section.

(e) In the event that a military or overseas voter executes a ballot pursuant to this section and an application for a vote by mail ballot pursuant to Section 3102, the elections official shall process the application and the ballot in accordance with this chapter.

(f) Notwithstanding any other provision of law, a military or overseas voter who qualifies pursuant to this chapter may, by facsimile transmission, register to vote and apply for a ballot pursuant to this section or a vote by mail ballot. Upon request, the elections official shall send the ballot to the qualified military or overseas voter either by mail, facsimile, or electronic transmission, as requested by the voter.

SEC. 9. Section 3103.5 of the Elections Code is amended and renumbered to read:

3106. (a) A military or overseas voter who is living outside of the territorial limits of the United States or the District of Columbia, or is called for military service within the United States on or after the final date to make application for a vote by mail ballot, may return his or her ballot by facsimile transmission. To be counted, the ballot returned by facsimile transmission shall be received by the voter's elections official no later than the closing of the polls on election day and shall be accompanied by an identification envelope containing all of the information required by Section 3011 and an oath of voter declaration in substantially the following form:

OATH OF VOTER

I, \_\_\_\_\_, acknowledge that by returning my voted ballot by facsimile transmission I have waived my right to have my ballot kept secret. Nevertheless, I understand that, as with any vote by mail voter, my signature, whether on this oath of voter form or my identification envelope, will be permanently separated from my voted ballot to maintain its secrecy at the outset of the tabulation process and thereafter.

My residence address is \_\_\_\_\_.  
(Street Address) (City) (ZIP Code)

My current mailing address is \_\_\_\_\_.  
(Street Address) (City) (ZIP Code)

My email address is \_\_\_\_\_. My facsimile transmission number is \_\_\_\_\_.

I am a resident of \_\_\_\_\_ County, State of California, or am qualified as an elector pursuant to paragraph (2) of subdivision (b) of Section 321 of the Elections Code and I have not applied, nor intend to apply, for a vote by mail ballot from any other jurisdiction for the same election.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Signature) \_\_\_\_\_  
voter (power of attorney cannot be accepted)

**YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE ABOVE OATH AND INCLUDE IT WITH YOUR BALLOT AND IDENTIFICATION ENVELOPE, ALL OF WHICH ARE RETURNED BY FACSIMILE TRANSMISSION.**

(b) Notwithstanding the voter's waiver of the right to a secret ballot, each elections official shall adopt appropriate procedures to protect the secrecy of ballots returned by facsimile transmission.

(c) Upon receipt of a ballot returned by facsimile transmission, the elections official shall determine the voter's eligibility to vote by comparing the signature on the return information with the signature on the voter's affidavit of registration. The ballot shall be duplicated and all materials preserved according to procedures set forth in this code.

(d) Notwithstanding subdivision (a), a military or overseas voter who is permitted to return his or her ballot by facsimile transmission is, nonetheless, encouraged to return his or her ballot by mail or in person if possible. A military or overseas voter should return a ballot by facsimile transmission only if doing so is necessary for the ballot to be received before the close of polls on election day.

SEC. 10. Section 3104 of the Elections Code is repealed.

SEC. 11. Section 3106 of the Elections Code is amended and renumbered to read:

3107. When the application is received by an elections official, other than a county elections official, the elections official receiving it shall, after the election, transmit it to the county elections official who, if the application is not subject to rejection, shall file the original. If an application is rejected, it shall be returned to the applicant with the reason for rejection endorsed on it, together with a new blank application.

SEC. 12. Section 3107 of the Elections Code is amended and renumbered to read:

3108. If a military or overseas voter who is qualified pursuant to paragraph (1) of subdivision (b) of Section 300 is released from service after the closing date of registration for an election and has returned to the county of his or her residence and is not a registered voter, he or she may apply in person to the elections official for permission to register. If the elector furnishes documentary proof of release from service after the closing date of registration for the election, the elections official shall allow him or her to be registered and to vote in the election. On or before the day of election the elections official shall deliver to the precinct board a list of military or overseas voters registered under this section.

SEC. 13. Section 3108 of the Elections Code is amended and renumbered to read:

3109. If any military or overseas voter to whom a vote by mail ballot has been mailed and which ballot has not been voted by him or her returns to the county in which he or she is registered, or for a military or overseas voter qualified pursuant to paragraph (2) of subdivision (b) of Section 321, to the county in which the applicant's parent or legal guardian resided when the parent or legal guardian last lived within the territorial limits of the United States or the District of Columbia on or before election day, he or she may apply for a second vote by mail ballot pursuant to Section 3014. The elections official shall require him or her to sign an authorization to cancel the vote by mail ballot previously issued when it is returned to the

county elections official. The elections official shall then issue another vote by mail ballot to the voter, or the elections official shall certify to the precinct board that the voter is eligible to vote in the precinct polling place of his or her residence.

SEC. 14. Section 3109 of the Elections Code is amended and renumbered to read:

3110. If any military or overseas voter returns to the county of his or her residence, or for a military or overseas voter qualified pursuant to paragraph (2) of subdivision (b) of Section 321, to the county in which the applicant's parent or legal guardian resided when the parent or legal guardian last lived within the territorial limits of the United States or the District of Columbia, after the final day for making application for a vote by mail ballot, he or she may appear before the elections official and make application for registration, vote by mail ballot, or both. The elections official shall register the voter, if he or she is not registered, and deliver to him or her a vote by mail ballot which may be voted in the elections official's office or voted outside the elections official's office on or before the close of the polls on the day of election and returned as are other vote by mail ballots.

SEC. 15. Section 3110 of the Elections Code is amended and renumbered to read:

3111. If a military or overseas voter is unable to appear at his or her polling place because of being recalled to service after the final day for making application for a vote by mail ballot, but before 5 p.m. on the day before the day of election, he or she may appear before the elections official in the county in which the military or overseas voter is registered or, if within the state, in the county in which he or she is recalled to service and make application for a vote by mail ballot, which may be submitted by facsimile, or by email or online transmission if the elections official makes the transmission option available. The elections official shall deliver to him or her a vote by mail ballot which may be voted in the elections official's office or voted outside the elections official's office on or before the close of the polls on the day of election and returned as are other vote by mail ballots. To be counted, the ballot shall be returned to the elections official's office in person, by facsimile transmission, or by an authorized person on or before the close of the polls on the day of the election. If the military or overseas voter appears in the county in which he or she is recalled to service, rather than the county to which he or she is registered, the elections official shall coordinate with the elections official in the county in which the military or overseas voter is registered to provide the ballot that contains the appropriate measures and races for the precinct in which the military or overseas voter is registered.

SEC. 16. Section 3111 of the Elections Code is amended and renumbered to read:

3112. Whenever by any statute of the United States, provision is made for vote by mail, an application for a vote by mail ballot made under that law may be given the same effect as an application for a vote by mail ballot made under this code.



If, by any federal statute, provision is made for the transmission of applications for vote by mail status to the Secretary of State, he or she shall transmit the applications to the county elections official of the county in which the applicant claims residence, or for a military or overseas voter qualified pursuant to paragraph (2) of subdivision (b) of Section 321, to the county in which the applicant's parent or legal guardian resided when the parent or legal guardian last lived within the territorial limits of the United States or the District of Columbia.

SEC. 17. Section 3112 of the Elections Code is amended and renumbered to read:

3113. If by any act of Congress which is now or may become effective during the effective period of this section, provision is made for voting by military or overseas voters, that act shall control and be superior to any conflicting provisions of this code, and all state, county, municipal, and district officers who are charged with the performance of duties with reference to the election laws of this state shall perform the duties and discharge the obligations placed upon them by that act of Congress. It is the purpose and intent of this section that full effect shall be given to ballots cast by military or overseas voters under federal statutes in order that no person shall be deprived of his or her vote by virtue of having cast his or her ballot under any federal statute rather than under the laws of this state.

SEC. 18. Section 3114 is added to the Elections Code, to read:

3114. (a) For an election for which this state has not received a waiver pursuant to the Military and Overseas Voter Empowerment Act (42 U.S.C. Sec. 1973ff et seq.), not sooner than 60 days but not later than 45 days before the election or, if the 45th day before the election is a weekend or holiday, not later than the business day preceding the 45th day, the elections official shall transmit a ballot and balloting materials to each military or overseas voter who by that date submits a valid application pursuant to Section 3102.

(b) If a ballot application from a military or overseas voter arrives after the 45th day before the election, the elections official charged with distributing a ballot and balloting materials to that voter shall transmit them to the voter as soon as practicable after the application arrives.

SEC. 19. Section 3116 is added to the Elections Code, to read:

3116. A military or overseas voter may use a federal write-in absentee ballot to vote for all offices and ballot measures described in subdivision (a) of Section 3102.

SEC. 20. Section 3117 is added to the Elections Code, to read:

3117. A valid ballot cast shall be counted if it is received by the elections official by the time the polls close on the day of the election.

SEC. 21. Section 3118 is added to the Elections Code, to read:

3118. The elections official shall include with the ballot a declaration to be signed by the military or overseas voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of this state or the United States.

SEC. 22. Section 3119 is added to the Elections Code, to read:

3119. Elections officials shall implement an electronic free access system by which a military or overseas voter may determine by telephone, electronic mail, or Internet whether the military or overseas voter's ballot has been received.

SEC. 23. Section 3120 is added to the Elections Code, to read:

3120. The elections official shall request an electronic mail address from each military or overseas voter who registers to vote after the effective date of this section. A military or overseas voter who provides an electronic mail address may request that his or her application for a ballot be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the year following the calendar year of the date of the application or another shorter period the voter specifies. An elections official shall provide a ballot to a military or overseas voter who makes a standing request for each election to which the request is applicable. A military or overseas voter who is entitled to receive a ballot for a primary election is entitled to receive a military or overseas ballot for the general election.

SEC. 24. Section 3121 is added to the Elections Code, to read:

3121. (a) As soon as practicable before an election, each elections official shall publish on his or her Internet Web site a list of all of the ballot measures and federal, state, and local offices that, as of that date, the elections official expects to be on the ballot on the date of the election. The list shall also contain specific instructions for how a voter is to indicate on a federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot measure to be contested.

(b) A military or overseas voter may request a copy of the list described in subdivision (a). The elections official shall send the list to the voter by facsimile, electronic mail, or regular mail, as the voter requests.

(c) Not later than 60 days before a regularly scheduled election and as soon as practicable before a special election, the elections official shall update on his or her Internet Web site the list described in subdivision (a) with the certified candidates for each office and certified ballot measures and make the updated list publicly available.

SEC. 25. Section 3122 is added to the Elections Code, to read:

3122. (a) If a military or overseas voter's mistake or omission in the completion of a document under this chapter does not prevent determining whether a military or overseas voter is eligible to vote, the mistake or omission does not invalidate the document. Failure to satisfy a nonsubstantive requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted under this chapter. In a write-in ballot authorized by this chapter, if the intention of the voter is discernible under this state's uniform definition of what constitutes a vote and the ballot is eligible to be counted pursuant to Sections 3019 and 3106, an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be accepted as a valid vote.

(b) Notarization is not required for the execution of a document under this chapter. An authentication, other than the declaration specified in Section

3106, 3117, or 3118 or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under this chapter. The declaration and any information in the declaration may be compared with information on file to ascertain the validity of the document.

SEC. 26. Section 3123 is added to the Elections Code, to read:

3123. A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, this chapter on application by either of the following:

- (a) A military or overseas voter.
- (b) An elections official in this state.

SEC. 27. Chapter 4 (commencing with Section 3300) of Division 3 of the Elections Code is repealed.

SEC. 28. It is the intent and purpose of the Legislature that this act comply with the federal mandate of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Sec. 1973ff et seq.) and implement the policies of that act and the Uniform Military and Overseas Voter Act (UMOVA) adopted by the National Conference of Commissioners on Uniform State Laws.

SEC. 29. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.